

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

BILL BAKER, #1487373

VS.

WARDEN, BUSTER COLE UNIT, ET AL.

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CIVIL ACTION NO. 4:20cv590

ORDER OF DISMISSAL

This case was referred to United States Magistrate Judge Kimberly C. Priest Johnson, who issued a Report and Recommendation concluding that Plaintiff's lawsuit should be dismissed without prejudice for failure to pay the ordered initial partial filing fee (Dkt. #17). Plaintiff filed what is construed as objections (Dkt. #18).


In Plaintiff's construed objections, he argues he is not required to pay a filing fee in this case since it is a case that was severed from his original complaint in which he is paying filing fees (Civil Action No. 6:20cv413, Tyler Division, E.D. Tex.). Indeed, the Tyler Division court severed Plaintiff's original complaint, resulting in the instant case and another case in the Southern District of Texas (Dkt. ## 11, 12). In its Order, the Tyler Division court noted that it had not examined whether Plaintiff would be required to pay the filing fee in the Sherman Division case. (Dkt. #12). Plaintiff states that in his severed case in the Southern District, he was not ordered to pay the filing fee since he was already paying for the initial case in the Tyler Division. He is mistaken. A review of that case shows that the court granted his motion to proceed *in forma pauperis*, but ordered that he pay an initial partial filing fee, followed by monthly installments until the \$350.00 filing fee is paid in full. (Civil Action No. 6:20cv50 (Dkt. #17), S. D. Tex.). Likewise, in the instant case, Plaintiff's motion to proceed *in forma pauperis* was granted, but he was ordered to pay an initial partial filing fee, followed by monthly installments until the \$350.00 filing fee is paid in full. (Dkt. #14).

In sum, the Prisoner Litigation Reform Act requires that prisoners pay filing fees in every case, even if *in forma pauperis* status is granted and the fees are paid in installments. 28 U.S.C. § 1915(b). Plaintiff was ordered to pay an initial partial filing fee of \$39.17, and as of today's date, he has failed to comply. Thus, he has failed to prosecute the case. Fed. R. Civ. Proc. 41(b). Plaintiff's construed objections are without merit.

The Report and Recommendation of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the construed objections, the Court concludes that the findings and conclusions of the Magistrate Judge are correct, and adopts the same as the findings and conclusions of the Court.

It is therefore **ORDERED** that Plaintiff's complaint is **DISMISSED** without prejudice. All motions by either party not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 19th day of February, 2021.


SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE